

REGIONAL OFFICE – SHILLONG

NATIONAL HIGHWAYS & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.

Ministry of Road Transport & Highways, Government of India

First floor, Parkside Building, Near BSNL, Barik, Shillong, Meghalaya-793001

Email- edp.shillong@nhidcl.com , edproshillongnhidcl@gmail.com



CIN: U45400DL2014GOI269062
A GOVERNMENT OF INDIA ENTERPRISE

NHIDCL/RO-SHG/R-M-B/K-R-P/2021/254/1/375/

Dated: 06.07.2023

WITHOUT PREJUDICE

To

M/s Aushta Consulting Engineers Pvt. Ltd.
in JV with DN Consultant in association with
NM Engineering and Consultant
H. No.: 623, Sec: 21b, Aushta House
Faridabad, Haryana.

Sub: - Consultancy Services for Authority's Engineer for supervision of "Improvement/Widening to 2-lane with earthen shoulders of Ranikor-Maheshkhola-Baghmara road section (i) Package - IV from Kanai to Rongara, existing chainage from Km 85+970 to 102+345 (Design chainage from 81+100 to 96+000) design length - 14.763 Km and (ii) Package - V from Rongara to Panda, existing chainage from Km 102+345 to Km 119.810 (Design chainage from Km 96+000 to Km 112.300) design length - 16.300 Km on EPC Mode under SARDP - NE 'Phase A' in the State of Meghalaya."

Termination of Contract as per Clause 2.9.1 of the Contract Agreement - reg.

Ref: - (i) AE letter no. ACEIPL-DNC/NHIDCL/ML-K-P/Pkg-4&5/2023-24/073 dt.12.06.2023

(ii) ACEIPL-DNC/NHIDCL/ML-K-P/Pkg-4&5/2023-24/068 dated 02.06.2023

(iii) NHIDCL/RO-SHG/R-M-B/K-R-P/2021/254/01/3491 dated 04.05.2023.

(iv) NHIDCL/RO-SHG/R-M-B/K-R-P/2021/254/01/3375 dated 08.04.2023.

(v) NHIDCL/RO-SHG/R-M-B/K-R-P/2021/254/1/3218 dated 02.03.2023.

(vi) PMU-BAGHMARA/RMB/AE/PKG-IV&V/1168 dated 24.02.2023.

(vii) HQ, NHIDCL email dated 16.02.2023.

(viii) ACEIPL-DNC/NHIDCL/ML-K-P/Pkg-4&5/2022-23/304 dated 15.02.2023.

(ix) e-file no. 218620.

(x) ACEIPL-DNC/NHIDCL/ML-K-P/PKG-4&5/2022-23/265 dated 16.12.2022.

(xi) PMU-Baghmara/RMB/P/Pkg-IV&V/998 dated 07.11.2022.

(xii) PMU-BAGHMARA/RMB/AE/PKG-IV&V/967 dated 26.10.2022.

(xiii) NHIDCL/Meghalaya/AE/R-M-B/PKG-IV&V/K-R-P/2020/2274 dated 20.10.2022.

(xiv) NSC/2022-23/204 dated 14.10.2022.

(xv) PMU-BAGHMARA/RMB/AE/Pkg-IV&V/919 dated 08.10.2022.

(xvi) ACEIPL-DNC/NHIDCL/ML-K-P/Pkg-4&5/2022-23/213 dated 03.10.2022.

(xvii) ACEIPL-DNC/NHIDCL/ML-K-P/Pkg-4&5/2022-23/189 dated 06.09.2022.

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- (xviii) ACEIPL-DNC/NHIDCL/ ML-K-P/Pkg-4&5/2022-23/144 dated 29.07.2022.
- (xix) PMU-Baghmara/RMB/AE/Pkg-IV&V/704 dated 13.07.2022.
- (xx) ACEIPL-DNC/NHIDCL/ML-K-P/Pkg-4&5/2022-23/097 dated 25.06.2022.
- (xxi) PMU-Baghmara/RMB/AE/Pkg-IV&V/593 dated 26.05.2022.
- (xxii) PMU-BAGHMARA/RMB/AE/PKG-IV&V/511 dated 09.04.2022.
- (xxiii) NHIDCL/RO-SHG/R-M-B/K-R/2021/254/1/1165 dated 12.10.2021.
- (xxiv) NHIDCL/RO-SHG/R-M-B/K-R-P/2021/254/1/769 dated 07.07.2021.
- (xxv) PMU-TURA/P/RMB/02/1257 dated 31.03.2021.

Sir,

The Consultancy Agreement dated 16.12.2020 was executed between National Highways & Infrastructures Development Corporation Limited (herein referred as “NHIDCL/ Authority”) and M/s Aushta Consulting Engineers Pvt. Ltd. in JV with DN Consultant in association with NM Engineering and Consultant (hereinafter referred to as “Consultant” or the “Authority’s Engineer/ Consultant”) for providing consultancy services for the “Consultancy Services for Authority’s Engineer for supervision of “Improvement/Widening to 2-lane with earthen shoulders of Ranikor-Maheshkhola-Baghmara road section (i) Package - IV from Kanai to Rongara, existing chainage from Km 85+970 to 102+345 (Design chainage from 81+100 to 96+000) design length - 14.763 Km and (ii) Package - V from Rongara to Panda, existing chainage from Km 102+345 to Km 119.810 (Design chainage from Km 96+000 to Km 112.300) design length - 16.300 Km on EPC Mode under SARDP - NE ‘Phase A’ in the State of Meghalaya.” The Commencement Date of the services of the Authority’s Engineer was declared as 13.01.2021 with a Construction Period of 18 (Eighteen) months and 60 (sixty) months of DLP.

2. The said projects are being executed by M/s Narendra Sharma (“Contractor”) in pursuance of the Contract Agreement dated 07.10.2020 (“Contract Agreement”). The Consultant having represented to the Authority that they have the required professional skills, personnel and technical resources and has agreed to provide the services on the terms and conditions set forth in this Consultancy Agreement. Therefore, it was the obligation of the Consultant to carry out the services in accordance with the provisions of the Consultancy Agreement.

3. With regard to the Standard of Performance expected from the Consultant, Clause 3.1.1 of Consultancy Agreement states that:

“The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment,

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machinery, materials and methods “The Consultants shall always” act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client’s legitimate interests in any dealings with Sub-consultants or Third Parties”. However, this office has received numerous correspondence(s) from the EPC Contractors and GM(P) in which Contractors have made serious allegations about the services of the Authority’s Engineer.

4. With reference to the subject mentioned above, it is to bring in your kind attention that you have been repeatedly directed to rectify your defaults in mobilization of adequate manpower, submission of correct MPR & reports as per CA, recommendation of correct SPS/IPC’s, fulfilling the statutory obligations under ToR etc., however, you have been failed to perform as per obligations and to take any remedial actions.

5. Whereas, the Consultant was directed numerous times to improve their performance and discharge their obligations in accordance with the provisions of the Consultancy Agreement. The remarks regarding their performance have been well expounded in Inspection Notes of GM (P), SPM, & ED(P) and other NHIDCL Officials during their site visits. Due to their gross negligence to the obligations under Contract Agreement, the Authority vide PMU Tura letter dated 31.03.2021 served a Show Cause Notice to Authority’s Engineer due to insufficient deployment of Key Personnel and Sub-Professional Staff and the same issue is being continued till date. It is regretted to state that the Authority’s Engineer was never been able to deploy full manpower at site. Moreover, the AE have failed to provide the Office Accommodation and Transportation in accordance with the Contract Agreement. It was also discovered that during the early stages of construction, the Authority’s Engineer was unable to review and approve the Plan & Profile, Road Design and Bridge Design submitted by the EPC Contractor which is a gross violation to the Section 6 of the TOR Clause 5.1. The several notices in this regard have been issued to the Consultant by PMU- Baghmara/Tura & RO-Shillong. However, the Consultant has failed to rectify their defaults as well as to comply the observations made.

6. Whereas, the notice for “Suspension of Payments” under Clause 2.8 of the Contract Agreement due to failure to perform under the Clauses 3.8, 4.5.2., 4.5.6 & 7.1 under General Conditions of the Contract Agreement, Clauses 3.1, 3.2, 3.3, 3.4, 5.5 & 5.6 & 11 under the Terms of Reference of CA was served to the Authority’s Engineer vide the Authority letter no. NHIDCL/RO-SHG/R-M-B/K-R-P/2021/254/1/769 dated 07.07.2021 & PMU-Baghmara/RMB/AE/Pkg-IV&V/593 dated 26.05.2022. However, the Authority’s Engineer has failed to take necessary action.

7. Whereas, it is apprised that the Authority’s Engineer had discharged their duties in a fair, impartial and efficient manner during the initial period of their contract when they have full deployment of the Key personnel and sub-professional

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staff. AE monitored and supervised the work done by the EPC Contractor regularly. Moreover, the Milestone-I & Milestone-II of both the projects were achieved timely by the EPC Contractor as per the original schedule of time (with grace period of 1 month in case of MS-II). However, later on, it was observed that the AE services deteriorated due to various factors which negatively impacted the project. It is noted with the great concern that the Milestone-III & IV of both project was missed as per schedule-J of the CA/approved EOT also.

8. Whereas, the Key Personnel, Team Leader cum Sr. Highway Engineer left the project site on 01.11.2021 and despite of several advisories, instructions, and Notices to deploy sufficient number of staff as per the Contract Agreement from the Authority, the Authority Engineer has failed to discharge their obligations regarding the deployment of the **Team Leader cum Senior Highway Engineer for a long period of time (*more than 1.5 years*)**. It is noted that the prolonged absence of Team Leader from site has negatively impacted the progress of the work. Due to this, Authority had no option left, but to impose penalty due to non-availability of the Team Leader cum Senior Highway Engineer as per HQ, Circular NHIDCL/F&A/HQ/SOP Contract Management/e-206721 dated 06.06.2022.

9. Whereas, the availability of key personnel deployed at site is found to be 50% in a month. The frequent replacements of Key Personnel were approved by the Authority to facilitate the consultant for smooth progress of the work. But the failure of consultant in providing requisite Senior Staff during the Construction Period has undoubtedly affected the progress and hampered the AE's Obligation to provide technical support to Authority.

10. Whereas, the 'Notice for Declaration as 'Non-Performer'' was issued to the Authority's Engineer vide Authority letter no. **PMU-Baghmara/RMB/AE/Pkg-IV&V/704 dated 13.07.2022**. The compliance/reply of the AE was submitted by the AE vide letter no. **ACEIPL-DNC/NHIDCL/ ML-K-P/Pkg-4&5/2022-23/144 dated 29.07.2022**, wherein AE confirmed to discharge their duties and responsibilities in an efficient manner.

11. Whereas, the Authority's Engineer had recommended various incorrect SPS/IPC's under the provisions of the Contract Agreement as evidenced by this office's letter NHIDCL/RO-SHG/R-M-B/K-R/2021/254/1/1165 dated 12.10.2021, PMU-Baghmara letter **PMU-BAGHMARA/RMB/AE/PKG-IV&V/511 dated 09.04.2022**, had further raised observations to the Authority regarding the discrepancies found in SPS-11 in Pkg-V where the quantity recommended by AE and the quantity certified in the RFI's summary sheet did not match, further the AE had not taken cognizance the overlap of chainage of RFIs summary sheet of CTSB in Reconstruction Section and the chainages recommended by the AE was not completed in full width. The discrepancy was observed in the price adjustment calculation of work had been observed in IPC-10, discrepancies observed in SPS-13 of RMB Pkg-IV, wherein the Authority's Engineer had certified the wrong quantity of road work items, due to which

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Show Cause Notice was issued by the Authority vide letter no. **PMU-Baghmara/RMB/P/Pkg-IV&V/998 dated 07.11.2022**. Surprisingly, the Authority's Engineer is in continuous default with every bill recommended either with some major/ minor discrepancies.

12. Whereas, the approach of Authority's Engineer is always found to be negative for projects, it has been observed that several times the Authority's Engineer has recommended to withhold amounts on account of non-obtaining source approval and applicable permits which is found to be Contradictory as along with each SPS from SPS-1 to 13, the AE has submitted that all required permits have been obtained by the EPC Contractor and the same was submitted by AE during the visit of SPM in the Month of May-June 2022.

13. Whereas, the several notices have been served to the AE, regarding submission of incorrect reports MPR, MIR, DIR, DPR and other statutory reports as mentioned in the Contract Agreement as mentioned below:

- (a) Failure to update daily reports/photographs of physical progress on the PMIS Portal despite of instructions from the Competent Authority.
- (b) Non-submission of Daily Inspection Reports under CA TOR Cl. 5.6.
- (c) Failure to submit photographs of daily quality checks with RFIs under TOR Cl. 5.6.
- (d) Non-submissions of quality inspection test readings witnessed under TOR Cl. 5.6 of CA
- (e) Submitting incorrect/wrong MPRs.

But at present it has been observed rather than complying with the observations made the AE has even stopped the submission of various reports e.g., Updation of PMIS, Daily Inspection Reports under CA TOR Cl. 5.6, Submission of quality checks and RFIs under Cl 5.6 of TOR, & other reports.

14. Whereas, the Authority's Engineer has miserably failed in the correct assessment of EoT proposals submitted by the EPC Contractor for the subject works. It is pertinent to mention that the EoT proposals for subject work were submitted by the EPC Contractor in September'2021 to the Authority's Engineer for further processing to the Authority. Rather than investigating the proposal thoroughly the Authority's Engineer recommended the proposal in a hasty manner, requiring the Authority to guide and assist the Authority Engineer in calculating the delay and submitting the necessary supporting documents and other details and finally recommended the EOT in January 2022. It is worth noting that the Authority Engineer prolonged the EoT issue due to their incompetence in the assigned work. Moreover, the extended period of RMB, Pkg-V has already been elapsed on 19.03.2023 and the EPC Contractor has submitted the EOT

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proposal to AE on 02.04.2023. However, after a lapse of 23 days after repeated directions of Authority AE has recommended the EOT-03 for the subject works.

The extended period of RMB, Package-IV was lapsed on 10.05.2023 and the EPC Contractor has submitted the EOT proposal 13.05.2023, however, the AE has recommended the EOT-03 after a lapse of 10 days in very hasty manner.

15. Whereas, the Authority's Engineer has failed to discharge obligations related to Project Highway, it has been observed that after a lapse of 30 (thirty) months from the Appointment date the finalization of scope of various items, as per provisions of CA is still pending.

16. Whereas, the Authority's Engineer has failed to maintain the quality of work during execution in both projects of RMB Packages IV & V and the complaints and grievances received from the public, was informed to AE. It is surprising that even after the occurrence of such events, the Authority had to instruct and direct the AE to invoke as per clause 4.4 of the Contract Agreement. The AE lacks supervision on the job at the site and fails to take corrective action for poor work quality, as a result, defamed the name and reputation of Authority among the local public and other departments.

17. Whereas, it has been noted with a great disappointment that the due diligence has not been exercised from AE's end and a toxic environment at work site has been created by AE as the claims of the EPC Contractor was pending without any resolution, causing failure in ensuring smooth functioning of project works and resolution of issues.

18. Whereas, the EPC Contractor vide letter dated 14.10.2022, has deliberated that the "Authority's Engineer had failed to discharge their duties in a fair, impartial and efficient manner. The Authority's Engineer, who is supposed to assist and act with an authority on behalf of the Authority, is not working in the interest of the Project work. Rather, they are discharging their duties in a flimsy and biased manner." Accordingly, the Contractor submitted their representation to invoke Article-18, Clause 18.7 (ii) of Contract Agreement for Termination of Authority's Engineer". Invocation clause 18.7 (ii) by the EPC Contractor only highlights the services of the Authority's Engineer are not in accordance with clause 3.1 of the TOR and the Authority is in full right to invoke 2.9.1 (h) of GCC which provides that "*if [the] EPC Contractor represents to Employer that the Consultant is not discharging his duties in a fair, efficient and diligent manner and if the dispute remains unresolved, Employer may terminate this contract*".

19. Whereas, the construction period of the services of the AE has ceased on 12.07.2022 and AE vide letter dated 25.06.202, 06.09.2022, and 03.10.2022 has made the submissions and requested to the Authority for foreclosure of the contract from their services for supervision of the above works. Also, the Authority's Engineer letter

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dated 16.12.2022, has stated that they would prefer the consultancy contract to be closed and further requested to release all their dues and relieve them from their services.

20. Whereas, the Authority's Engineer was expected to discharge duties in a fair, impartial and efficient manner consistently with the highest standards of professional integrity and Good Industrial Practice as per various provisions of the TOR and GCC of the Consultancy Agreement.

21. Whereas, a meeting was held on 15.02.2023 at HQ NHIDCL under the chairmanship of Director (Technical), and the Competent Authority has given the Authority's Engineer a 15 (Fifteen) days period to improve their performance before issuing a notice for "Intention to Termination."

22. Whereas, the Authority Engineer has attempted to rectify the defaults they have committed, and vide letter dated 15.02.2023, AE has submitted the CV of Sh. Amit Kumar, for the position of Team Leader cum Senior Highway Engineer of the Authority Engineer, which has been vacant for more than a year, however, while verifying the CV of the Key Personnel Sh. Amit Kumar in the Infracon Portal, it was found that the CV has been displayed under the "Amber Category," and the Authority has returned the CV with the instruction for submission of another suitable candidate.

23. Whereas, the Authority's Engineer was under observation and the overall performance has been witnessed by the Authority since the date of Commencement of Services. The remarks regarding the performance of the Authority's Engineer have been well elaborated in the Inspection Notes of GM (P), SPM, & ED (P), and Other NHIDCL Officials during their site visits. Further, vide PMU Tura letter no. PMU-TURA/P/RMB/02/1257 dated 31.03.2021, the Authority Engineer were served a Show Cause Notice due to insufficient deployment of Key Personnel and Sub-Professional Staff.

24. Whereas, the Authority's Engineer has caused breached to the provisions of the Consultancy Agreement and is in defaults in terms of following clauses of Agreement, which are reproduced as under: -

"4.5.2(GC) In case to commence services is given within 120 days of the signing of the contract, the authority expects all the Key Personnel specified in the Proposal to be available during the implementation of the agreement. The authority will not consider any substitution of key personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than three key personnel subject to equal or better qualified and experienced personnel being provided to the satisfaction of the

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Authority. Replacement of Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of this Agreement. Replacement of one key personnel shall be permitted subject to a reduction of remuneration equal to 5% (five percent) of the total remuneration specified for the Key Personnel who is proposed to be replaced. In case of second replacement, the reduction in remuneration shall be equal to 10% (ten percent) and for third and subsequent replacement, such reduction shall be equal to 15% (fifteen percent) if the consultant finds that any key personnel has made false representation regarding his quality and experience, he may request the Employer for such replacement. The replacement shall however be of an equal or better score. The personnel so replaced shall be debarred from future projects for 2 years”.

“3.1 (TOR) The Authority’s Engineer shall discharge its duties in a fair, impartial, and efficient manner, consistent with the highest standards of professional integrity and Good Industrial Practice”.

“3.2 (TOR) The Authority’s Engineer shall perform the duties and exercise the authority in accordance with the provisions of this agreement and substantially in accordance with the terms of reference (“Terms of Reference” or “TOR”) set forth in Annexure-1 of the Schedule-N, but subject to obtaining prior approval of the Authority before determining:

- a. Any Time Extension
- b. Any additional cost to be paid by the Authority to the Contractor;
- c. The Termination Payment;
- d. Issuance of Completion Certificate; or
- e. Any other matter which is not specified in (a), (b), (c) or (d) above and which creates financial liability on either party.

“3.3 (TOR) The Authority Engineer shall submit regular periodic reports, once every month, to the authority in respect of its duties and functions under this agreement. Such reports shall be submitted by the Authority’s Engineer within 10 (ten) days of the beginning of every month”.

“3.4 (TOR) the Authority’s Engineer shall inform to the contractor of any delegation of its duties and responsibilities to its suitably qualified and experienced personnel; provided, however, that it shall not delegate the authority to refer any matter for the Authority’s prior approval in accordance with the provision of Clause 18.2 EPC Agreement”.

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“3.8 (GC) Reporting Obligations: The consultant shall submit to the Client the reports and documents specified in Appendix B hereto, in the form, in the numbers, and within the time periods set forth in the said Appendix”.

“5.5 (TOR) The Authority’s Engineer shall review the monthly progress report furnished by the Contractor and send its comments thereon to the Authority and the contractor within 07 (seven) days of receipt of such report”

“5.6 (TOR) On a daily basis, the concerned key personnel of the Authority Engineer shall inspect the construction works. Following activities need to be undertaken during the visits.

- *Review of construction including progress, quality, and safety of construction*
- *Inspection of defects and deficiencies in construction work*
- *Witnessing quality inspection tests at labs established by Concessionaire on a sample basis*

The Authority Engineer also needs to capture the following documents and send them to the NHIDCL field office on daily basis:

- *Scanned copy of filled RFI (request for inspection) form including commentary on satisfactory/unsatisfactory nature of work completed by the concessionaire*
- *Daily inspection report Proforma as provided in Annexure I*
- *Reading of quality inspection test witnessed by the consultant*
- *Minimum 6 (six) high-resolution photographs supporting the remarks made by the AE in RFI form*

Team Leader will be responsible for sending daily emails to the NHIDCL office.

“As per Clause 18.1. (iv) The Staff of the Authority’s Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Authority’s Engineer to carry out its duties”.

“18.2 Duties and authority of the Authority’s Engineer

- i. *The Authority’s Engineer shall perform the duties and exercise the authority in accordance with the provisions of this agreement and substantially in accordance with the terms of reference (“Terms of Reference” or “TOR”) set forth in*

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Annexure-1 of the Schedule-N, but subject to obtaining prior approval of the Authority before determining:

- a. *Any Time Extension*
- b. *Any additional cost to be paid by the Authority to the Contractor;*
- c. *The Termination Payment;*
- d. *Issuance of Completion Certificate; or*
- e. *Any other matter which is not specified in (a), (b), (c) or (d) above and which creates financial liability on either party.*
- f. *No decision or communication of the Authority's Engineer shall be effective or valid unless its is accompanied by an attested true copy of the Approval of the Authority for and in respect of any matter specified in Clause 18.2 (i).*
- g. *The Authority's Engineer shall submit periodic reports at least once every month, to the Authority in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Authority's Engineer shall include in its report, compliance of the recommendations of the Safety Consultant"*

"18.3 Delegation by the Authority's Engineer"

- i. *The Authority's Engineer may, by order in writing, delegate any of his duties and responsibilities to suitably qualified and experienced personnel who are accountable to the Authority's Engineer or may revoke such delegation, under intimation to the Authority and the Contractor. Provided, however, that the Authority's Engineer shall be responsible and liable for all actions and omissions of such personnel.*
- ii. *Any failure of the Authority's Engineer to disapprove any work, plant or materials shall not constitute approval, and shall, therefore, not prejudice the right of the Authority to reject the work, plant or materials, which is not in accordance with the provisions of this Agreement and the Specifications and Standards.*
- iii. *Notwithstanding anything stated in Clause 18.3(i) above, the Authority's Engineer shall not delegate the authority to refer any matter for the Authority's prior approval wherever required in accordance with the provisions of Clause 18.2.*

"18.4 Instructions of the Authority's Engineer"

- i. *The Authority's Engineer may issue instructions for remedying any defect(s) to the Contractor. The Contractor shall take such instructions from the Authority's Engineer, or from an assistant to whom appropriate authority has been delegated under Clause 18.3.*

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- ii. *The instructions issued by the Authority's Engineer shall be in writing. However, if the Authority's Engineer issues any oral instructions to the Contractor, it shall confirm the oral instructions in writing within 02(two) working days of issuing them.*
- iii. *In case the Contractor does not receive the confirmation of the oral instructions within the time specified in Clause 18.4(ii), the Contractor shall seek the written confirmation of the oral instructions from the Authority's Engineer. The Contractor shall obtain an acknowledgment from the Authority's Engineer of the communication seeking written confirmation. In case of failure of the Authority's Engineer or its delegated assistant to reply to the Contractor within 02 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instructions".*

25. Whereas, the Authority has extended all possible efforts to facilitate the Authority's Engineer for smooth functioning of works, however, the Authority's Engineer has miserably failed to rectify its defaults and fulfil the Contractual Obligations and the AE could not be able to show any sign of improvement w.r.t taking remedial actions & failed to own commitment made during the meeting held on 15.02.2023 in NHIDCL, HQs.

26. Whereas, due to outbreak of COVID-19, Authority has given considerable relaxations to the AE and approved frequent replacement of Key Personnel staff, but it has been observed that the Authority's Engineer could not be able to provide sufficient manpower and discharging obligations effectively.

27. Whereas, the notice of 30 days for 'Termination of Contract' was issued to the Authority's Engineer on 04.05.2023 under Clause 2.9.1 of the Contract Agreement due to the aforementioned defaults from AE's end. However, no cognizance of the letter has been taken by the Authority's Engineer till date. Moreover, the AE vide letter dated 02.06.2023 just 02 (two) days before the expiration of Notice Period, has requested for another 10 days for preparation of reply the Notice as the Authority's Engineer was unable to search documents related to several issues and again vide letter dated 12.06.2023 requested for another 7 days for preparation of reply, which, itself demonstrates the type of seriousness was expected from AE's end during the incumbency period and thus further continuation AE's Services will be detrimental to the road project.

28. In the light of aforesaid, non-exhaustive fundamental breach and in view of the Consultant's persistent & sustained gross default in fulfilling contractual obligations, the Authority is left with no other option but to terminate this contract in accordance with

REGIONAL OFFICE – SHILLONG

NATIONAL HIGHWAYS & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.

Ministry of Road Transport & Highways, Government of India

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the provisions of Clause 2.9 of Article 2 under GCC of the Consultancy Agreement on account of Authority Engineer's Default with immediate effect.

29. The provisions of Clause 2.9.4 shall henceforth apply.

30. Whereas, as a consequence, and in accordance with Clause 2.9.4, upon Termination of this Consultancy Agreement in accordance with the terms of Article 2 of the GCC, the Authority's Engineer shall comply and conform to the following:

- a. Deliver to the Authority all plans, drawings, specifications, designs, reports, other documents, reports & software (if any) prepared by the Consultants for the Client under this Contract along with a detailed inventory.
- b. Deliver to the Authority all equipment & material made available by client or purchased by the Consultant with funds provided by the Client.

31. Whereas, the Authority, upon termination shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Client):

- a. remuneration pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination;
- b. reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
- c. except in the case of termination pursuant to paragraphs (a) through(d) of Clause GC2.9.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of there turn travel of the Consultants' personnel and their eligible dependents.

32. In pursuance of this Termination Notice, your firm shall perform no further services other than those reasonably necessary to close this Contract Agreement.

33. This Notice is being issued without prejudice to Authority's right to claim damages and/ or to realize any dues, losses and damages and/ or to exercise any other right or remedy on account of Consultant's failure to comply with its obligations under this Consultancy Agreement, which may be available now or in future under the Consultancy Agreement or under the applicable laws or otherwise, as the case may be.

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34. This order is issued with the approval of the Competent Authority of NHIDCL.



Yours Sincerely,


(Ajay Verma)
Executive Director (P)

Copy to:

- i. PPS to DG (RD) & SS, MoRT&H
- ii. PS to MD NHIDCL
- iii. PS to Chairman, NHAI
- iv. PS to Dir (A&F/T)
- v. ED (T/P) s, NHIDCL
- vi. GM/DGM(T/P) s, NHIDCL
- vii. GM (IT), NHIDCL, HQ (to upload the notice on the website)

